



CANNON BUILDING
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DOVER, DELAWARE 19904-2467

STATE OF DELAWARE
DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

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MEETING MINUTES:	BOARD OF PROFESSIONAL LAND SURVEYORS PUBLIC WORKSHOP
DATE AND TIME:	Thursday, November 15, 2012 at 11:00 a.m.
PLACE:	861 Silver Lake Boulevard, Dover, Delaware Conference Room A , second floor of the Cannon Building
APPROVED:	January 17, 2013

MEMBERS PRESENT

Michael Szymanski, Professional Member, Chair
James Bielicki, Jr., Professional Member, Vice Chair
Laurence McBride, Professional Member
Thomas Plummer, Professional Member
Mark Rosenthal, Public Member

DIVISION STAFF

Patricia Davis-Oliva, Deputy Attorney General
Amanda McAtee, Administrative Specialist II
Sheryl Paquette, Administrative Specialist III

MEMBERS ABSENT

Kenneth Monroe, Public Member

PUBLIC

Chris Plummer
Michael Early
Franco R. Bellafante
Richard Emge – City of Wilmington Law Department
Michael Leventry – City of Wilmington
Donald Erod
Scott Bradley – HBADE
Barbara Brodowzy – Ward & Taylor, LLC
Jason Berry – Kent County
Kris Connelly – Kent County
John Schulties – Kent County
Maria Evans – DAR
Tony DiEgidio – HBADE
Julian M. Eplazo
Woodrow "Roy" Marvel – PLS State of Delaware

CALL TO ORDER

Mr. Szymanski called the meeting to order at 11:03 a.m.

Review and Approval of Minutes – None

NEW BUSINESS

Possible amendments to Titles 9 and 22 of the Delaware Code regarding the issuance of a certificate of occupancy permits and survey monumentation

Possible amendment to Title 25, Chapter 3 regarding survey requirements for conveyances of real estate

Mr. Szymanski introduced the workshop and the background information of the topics to be discussed. He explained that the Board invited the public to the workshop in order to gain feedback on the Board's proposed changes.

Mr. Szymanski stated that the handout attached to the workshop agenda contained a few typographical errors. He stated that Title 9, chapter 30, section (d) should have read 2706 not 2760. Title 22, chapter 30, section (a) should have read "permanent corner marker" not "permanent corner maker" and section (b) should have read 2706 not 2760.

OTHER BUSINESS BEFORE THE BOARD (FOR DISCUSSION ONLY)

There was no other business before the board.

PUBLIC COMMENT

Jill Myers Gray, PLS – Newark, Delaware (Written Comment – attached)

Mr. Szymanski stated that he wanted to start the workshop by reading the one written comment that was sent to the Board in advance of the workshop. Mr. Szymanski read the letter from Jill Gray (attached to minutes).

Tony DiEgidio – HBADE

Tony DiEgidio stated that for years only a mortgage survey was performed when selling a house. The mortgage survey would check the property corners and make sure the house was within the restriction lines. Mr. DiEgidio stated that during the winter months setting corners would be an issue. He asked the Board when and why the permanent monuments needed to be in place.

Mr. Szymanski stated that Mr. DiEgidio was talking about two different things because corners that were set were not a process of settlement and that it was a process of certification of occupancy (C of O). The corners would have to be set in order to receive a C of O and a survey was a requirement of settlement. Currently in New Castle County one corner has to be set in order to receive a C of O. It would be beneficial to investigate how the grading and corners would be set during the winter.

Mr. DiEgidio stated that the cost to set corners was going to be passed on to the home buyer. Every time another step of regulation becomes established it creates another hurdle for the home builders. A survey before property conveyance remained a necessary step in the purchase of a home; however, he stated that he had an issue with getting the property corners set before a C of O was issued.

Mr. Szymanski stated, with regard to Mr. DiEgidio's objection, cost, availability during winter months, and all four corners have to be in place before a C of O can be issued.

Scott Bradley – HBADE

Scott Bradley stated that the Board would be asking two different people to pay for basically the same thing twice since the home builder set the stakes before the issuance of the C of O and then the home buyer paid for a survey before the home purchase. A surveying crew would be sent out to do the same thing twice; however, Mr. Bradley stated, instead it should be done all at the same time.

Mr. Bielicki stated the same thing was not necessarily being performed twice. Mr. Szymanski said in his experience he would estimate that 95-99% of the time the surveyor that set the corners would not do the settlement survey as well. The settlement survey would be completed by another firm that the settlement attorney hired. There are requirements in different locations and corners should be set prior to final settlement. Mr. Szymanski stated he did not believe that the public, the home builders, and land surveyors are aware of this issue.

Mr. Bradley stated he was not against the survey for conveyance; even if the purchase was a cash deal the home buyer should be aware of their property lines. The issue with setting the corners was that the cost would be pushed back to the homebuyer, each regulation adds cost to the home, and each cost has the potential to remove buyers from the market.

Mr. Bradley said he had could not locate Title 9, chapter 30, section 3005 in the Delaware code. The website stated that section 3005 was, "repealed by 75 Del. Laws, c. 85, § 4, effective June 30, 2005." Mr. Szymanski stated that Ms. McAtee could contact him with the information.

Richard Emge – City of Wilmington Law Department

Richard Emge questioned how it would be determined that the property was set and certified.

Mr. Szymanski stated in his experience the information had been present on a formal plan presentation. The surveyor would make a copy of the lot and take a red pen to mark the corner that was set. The surveyor would note what kind of corner it was, write a date when the corner was set, and then the plan would be signed and sealed. The document would then be sent to its respective county.

Mr. Emge stated that the issuance of a C of O does not always necessarily apply to the whole building and it may not be something that is easily handled with older buildings. This has been an issue for the City of Wilmington and there currently is no way to verify that the corners had been properly placed. Also, often the city's boundary lines are extended to the streets and sidewalks. The City of Wilmington does not necessarily want pegs and stakes in these areas. In certain instances, it may not always be appropriate to put in corner monuments.

Mr. Szymanski asked Mr. Emge's opinion about the proposed changes only being applied to new construction. Mr. Emge said he believed it would make more sense with new construction; however, with new lots or vacant lot situations, there may be portions of the property lines that extend to the sidewalk and streets. The City of Wilmington tries to keep degradation of pavement and sidewalks to a minimum. Mr. Szymanski stated that most surveyors would set a masonry nail, which would be flush with the concrete, or would drill a small hole in the concrete.

Mr. Emge stated that with respect to settlements he wanted to add a few examples where a survey would not be appropriate. When property is transferred to another party during divorce and probate situations, a conveyance of property technically occurs and a survey would not be appropriate. Also, foreclosure and tax sales are considered a judicial process and a survey would not be appropriate in those cases as well.

Woodrow “Roy” Marvel – PLS State of Delaware

Woodrow “Roy” Marvel stated that his primary work concerns rural property settlements. From his experience he believes that corners would prevent a lot of extra expenses during boundary disputes. He said he is in favor of requiring corners to be set before a settlement since it would protect everybody.

Mr. Szymanski asked Mr. Marvel if he thought it was advisable for the process of setting corners to become part of the process for final settlement for new construction. Mr. Marvel agreed that the process would be advisable.

Mr. Szymanski asked Mr. Marvel if he was in favor of a survey becoming a requirement to property settlement. Mr. Marvel agreed that a survey should be a requirement to settlement except for the instances that Mr. Emge mentioned earlier concerning foreclosure, tax sales, divorce, and probate situations.

Michael Leventry – City of Wilmington Department of Planning and Development

Michael Leventry stated that he was not opposed to a survey being completed for conveyance of property. His concerns were with corner markers and surveys becoming a requirement for a C of O. C of O is a requirement when a small business opens or changes from restaurant use to retail use, and vice versa. Almost all of the time a C of O is required. Requiring corner markers to be placed at the time of a survey would add an additional cost for economic development.

Mr. Leventry stated that in the City of Wilmington buildings exist that were constructed flush with each other. There would have to be some flexibility in these instances since there would be no way of installing a monument on the corner of a building. Mr. Leventry questioned the Board about why a survey would have to include a monument, a paper drawing showing property line conflicts should address the issue.

Mr. Bielicki stated that requiring monuments at time of settlement is not what the Board was proposing; The Board was proposing that the paper drawing Mr. Leventry was referring to be sufficient. In New Castle County the buyer decides if they want the monuments set.

Mr. Szymanski asked Mr. Leventry for his thoughts on new construction, such as a tear down and rebuild or vacant lot, to have a requirement that corners must be set for just those circumstances.

Mr. Leventry stated that in an instance where a new building is being constructed and financing is required, the financing bank would require a survey before the approval of financing. The bank would want to ensure the security of their investment and ensure that the building was being constructed on the property it was supposed to be on. The process in approving the financing would follow the process that currently exists. To have this additional requirement become part of the process would just be a redundancy and incur an additional cost.

Another issue Mr. Leventry wanted to address concerned condominiums and the fact that they were not horizontal anymore and went vertical as well. To put corner markers in a unit that someone owns seven stories up is just impossible. He was also concerned about possible ‘air rights’ since they can be bought above a structure.

Kris Connelly and John Schulties of Kent County Planning Office

Mr. Connelly stated that the marker requirement at C of O is more of a concern to the Kent County Planning office because they enforce requirements that are in place. Currently developers and builders do not necessarily set the corner markers at the time of C of O but a surveyor may set them at the time of conveyance. From a planning office standpoint, it would be great to have a survey for every piece of property.

Mr. Schulties talked about the practical application of the enforcement. He said field staff is concerned there are no violations with regard to the setback requirements of any given lot; whether it is in a subdivision or a scattered lot. The field staff looks for violations of the setback requirements during the footer inspection. Typically the surveyor corners out the lot before the footer inspection, and non-permanent markers are placed so members of the field staff can establish what is known as a box. The field staff then verifies that the footer was dug within the box. When members of the field staff return for final inspection before the issuance of C of O they are not typically looking for corner markers at that point because they were already reviewed during the footer inspection.

Mr. Szymanski asked how Kent County handled grading issues. Mr. Schulties explained that Kent County is governed by the Kent Conservation District (KCD) and that one requirement of final approval is that the KCD had to perform an inspection to ensure all the requirements were met. During the winter months KCD issued temporary approval permits for a 30 day period. Another 30 day permit would be issued if the grading did not complete during the first 30 day permit. Once KCD issued a temporary permit, the Kent County Planning office completed the project and at that point KCD and the builder worked together until the project was finished.

Mr. Bielicki questioned whether Mr. Schulties or Mr. Connelly was in favor of requiring the survey as part of conveyance. Mr. Connelly stated that a survey was never a bad thing to have at conveyance. Generally speaking it makes sense and it is much easier for us to work with a survey and there is less error down the line. Mr. Schulties stated that accessory structures built later on gave the county the most problems.

Mr. Plummer stated that since 1996 a mortgage inspection did not meet the standards in Kent and Sussex counties based on this Board's standards because based on those standards all corners were to be set. From Mr. Plummer's private practice experience corners were set when the house was staked. In almost all instances the corners were still in place when a home finished the building process. Mr. Plummer was not sure why it would be a grade issue when setting the corners because from his private practice experience it was not something he had an issue with.

Mr. Szymanski stated that Mr. Plummer was referring to the Board of Professional Land Surveyor's Rules and Regulations. Regulation 12.12 stated:

"12.12 Based on current information, the MSP shall be accepted as a minimum standard only in New Castle County when requested by the ultimate user as an option to a boundary survey. In Kent and Sussex counties, MSP's shall not be considered to meet the minimum local standards for the work required for mortgage or deed-related surveys or plans. For mortgage and deed-related surveys or plans in Kent County and Sussex County, the minimum requirement is a Boundary Survey Plan prepared in compliance with Regulation 12.0 which includes proper monument placement."

Mr. Connelly stated that their code did not require surveying and that typically good information is obtained from subdivision plans. Kent County's biggest problem area concerned larger parcels and parcels boarded by wetlands.

Mr. Bradley questioned why there were different requirements between the counties. Mr. Plummer stated that there was a questionnaire completed by land surveyors 1991. As a result of the survey, New Castle surveyors felt differently than Kent and Sussex surveyors, hence the rule.

Jason Berry – Kent Country Planning Office

Mr. Berry stated that his concern was the requirement of corners being set at every break in the property lines of large parcels such as farms. The planning office often comes across situations where farm owners want to build additional homes on their property. Currently the regulation is farms over ten acres can have a second dwelling and farms over fifty acres can have a third dwelling. If the requirement was to have a marker on every single break of the property line the county would experience problems with this. Mr. Berry suggested that some specifics should be written on this in legislation that would be helpful in these situations since the larger older parcels would be a concern for Kent County.

Mr. Szymanski asked Mr. Berry how he felt about a survey requirement at property conveyance.

Mr. Berry stated that a survey requirement would certainly help Kent County. The new property owner should know where their property lines exist. Mr. Berry agreed with all of the exceptions mentioned thus far concerning foreclosure, tax sales, divorce, and probate situations.

Franco R. Bellafante – PLS

Mr. Bellafante questioned the purpose of having markers in place at the time of C of O. He stated that some of the concerns presented during this workshop had merit and that the cost would be passed to the consumer, the consumer should be protected. According to this new law any conveyance of real estate, such as a large parcel of land containing fifty lots, would have to be staked in as well

Mr. Szymanski stated that the law would not require all lots to be staked and that was not part of the legislation. It does not state that the lot has to be staked at the time of property conveyance.

Mr. Bellafante stated that this would bring about another layer of bureaucratic regulations with little public benefit. At the time of conveyance the proposal works, at the time of C of O in his opinion it does not.

Tony DiEgidio – HBADE

Mr. DiEgidio stated that front corners are usually safe during new construction. Mr. Szymanski questioned Mr. DiEgidio about his feelings if there was an amendment to put in a requirement for just two front corners.

Mr. DiEgidio stated that he would agree to one front corner since it is easier to just deal with one. He personally has never had a problem with one stake or marker and with that one in place there was always something in the subdivision for the surveyor to locate. The proposed amendments would bring another step in bureaucratic paperwork associated with building a home.

NEXT MEETING

The next meeting of the Board is January 17, 2013 at 8:30 a.m. in Conference Room A, second floor of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

ADJOURNMENT

Mr. Szymanski stated that the Board appreciated the public's input during the workshop. With no further comments or discussion, the public workshop adjourned at 12:30 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'A McAtee', with a stylized flourish at the end.

Amanda McAtee
Administrative Specialist II

The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Board members and the public in supplementing their personal notes and recall for presentations.

Received

NOV 13 2012

Division of Professional Regulation
November 8, 2012

To: The Delaware Board of Professional Land Surveyors
Cannon Building
Suite 203
861 Silver Lake Blvd
Dover DE 19904

Re: Discussion of Potential Legislative Changes

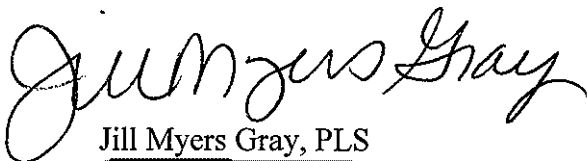
It's been my experience that the average member of the general public does not understand *the risk of excluding a boundary survey* from the settlement process.

I'm unable to attend the November 15, 2012 workshop to discuss this topic, but am writing in support of the proposed changes to Title 9 Chapter 30, Title 22 Chapter 3, and Title 25 Chapter 3 as written, and would like my support noted at the workshop.

The purchase of a home is one of the most critical and important investments a person can make. Again from personal experience, in speaking with the average home buyer, he or she has assumed that a boundary survey *including placement of corner monuments*, is involved in his investment.

I believe the proposed amendments as referenced in the October 18, 2012 letter would be positive changes made in the best interest of the general public.

Sincerely,



Jill Myers Gray, PLS

